No. 38

In the Supreme Court of the United States

OCTOBER TERM, 1961

LOS ANGELES MEAT & PROVISION DRIVERS UNION, LOCAL 626, ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

MOTION TO AFFIRM

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No. 511

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v.

UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

MOTION TO AFFIRM

Pursuant to Rule 16, Paragraph 1(c), of the Revised Rules of this Court, appellee moves that the judgment of the district court be affirmed.

STATEMENT

This is a direct appeal from the final judgment of the district court in a civil antitrust case, entered after defendants stipulated that they had unreasonably restrained trade in violation of Section 1 of the Sherman Act by fixing prices and eliminating competition in the sale of waste restaurant grease. The only issue presented is whether, in the circumstances of this case, the district court properly included in its judgment a provision ordering the appellant union to

expel from membership all grease peddlers, and enjoining it from admitting such persons. The relevant facts, as set out in the district court's opinion (J.S. 11–29), and in its findings of fact (J.S. 30–50) (which are taken verbatim from a stipulation of facts entered into by the parties (R. 20–41)), are as follows:

Grease peddlers are independent businessmen who buy, transport, and then sell waste restaurant grease on their own account (J.S. 31). They drive from restaurant to restaurant to pick up grease, and then deliver and resell their collections to a processing company (J.S. 32). The peddlers' profits depend on the margin between the price they pay for the grease and the price they obtain from the processor (*ibid.*); they are not employees of the processors (J.S. 31). The processing companies treat the grease and sell the converted product (yellow grease) in the foreign commerce of the United States (J.S. 34–35).

Until 1954, the Los Angeles grease peddlers operated as ordinary independent businessmen and were not affiliated with any union. They were in intense commercial competition with one another in purchasing grease from the restaurants in the area (J.S. 36–37). In 1954, appellant Singer, a business agent of the appellant union, proposed to various grease peddlers a plan to eliminate this competition: the union would increase the margin between purchase and sale prices of waste grease, grease peddlers would be forbidden to solicit or purchase grease from restaurant accounts of other peddlers, processors would be permitted to buy grease only from unionized peddlers, and grease peddlers who refused to become members

of the program would be forced out of business (J.S. 37).

By October 1954, most of the grease peddlers in Los Angeles had joined the union and the plan was put into effect (J.S. 37–38). The peddlers were organized as a separate unit in the Los Angeles Meat and Provision Drivers Union (an affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America), which became known as Local 626–B (J.S. 38). During the period October, 1954 to May, 1959, between 35 and 45 grease peddlers were members of that unit (J.S. 31). The major membership of the union consisted of about 2400 truck drivers, engaged in loading, unloading and transporting meat and meat products for packing houses and related employers (*ibid.*). Some grease processors also used truck driver members of the union to pick up and transport restaurant grease (J.S. 34).

Commencing in November 1954, acting in conjunction with the peddlers, Singer fixed purchase and sales prices for waste restaurant grease in the area, and allocated the sales and purchase of waste grease among the various peddlers and among the various processing companies (J.S. 38–39). Grease peddlers who violated the terms of the program, by deviating from the price levels fixed or by attempting to secure other peddlers' accounts, were disciplined by fines or suspension from business, and in some cases were put out of business (J.S. 39–48). Grease processing companies which did not follow the combination's de-

mands were disciplined by boycott (*ibid.*), and at least one processor was eliminated from business (J.S. 41).

On May 27, 1959, an indictment was returned against the appellants (the local union, its business agent, and four grease peddler members) charging them with violating Section 1 of the Sherman Act (15 U.S.C. 1) by fixing prices, allocating customers and accounts, and eliminating competitors. On the same day, the United States filed the present civil action to prevent and restrain this course of conduct. Appellants pleaded *nolo contendere* to the criminal charges, and stipulated the foregoing facts in the civil action. Appellants further stipulated that they had unlawfully combined and conspired in direct, substantial, and unreasonable restraint of trade and commerce, and that the government was entitled to injunctive relief perpetually enjoining them from participating in, or forcing grease processors to participate in, any plan to fix prices and eliminate competition in the gathering of waste grease by peddlers and their selling it to processors (J.S. 14; see R. 40).

The only remaining issue in the case was whether the decree should include a provision excluding the grease peddlers from the union until they become bona fide employees. The district court held that "[a]s long as this association of the peddlers and the Union continues, there is danger that their combined activities will be revived and that further suppression of competition in the yellow grease industry will result" (J.S. 28); and it included such an exclusionary provision, since it would be "the most effective, if not

the only means" to prevent resumption of the unlawful activities (*ibid.*).

ARGUMENT

The sole issue on this appeal is whether the district court abused its discretion in ordering independent businessmen to dissociate themselves from a labor union, a special subdivision of which they formed and joined as a vehicle for price fixing and other violations of the Sherman Act. The grease peddlers, it is agreed, are not employees. They are not covered by the National Labor Relations Act or the Norris-LaGuardia Act. There was no evidence before the district court showing that the exclusion of peddlers from the defendant union would injure or otherwise affect the employee members. Knowing the circumstances in which the peddlers joined the union, the district court found that there was danger that violations would recur "[a]s long as this association of the peddlers and the Union continues." (J.S. 28). Since this case involves only the application of a trial judge's undoubted discretion to frame relief which will effectively prevent repetition of the unlawful conduct, the appeal fails to raise a substantial question.

Conversely, the case does not raise any question concerning the power of a court to require employee members to sever their connection with a labor union utilized to violate the antitrust laws. No question is raised concerning the right of nonemployees to join unions or to undertake, jointly with employee members of labor unions, programs of mutual assistance not violating the antitrust laws. No question is pre-

sented concerning the right of a union to organize independent peddlers who are competing with the employee members of the union in the performance of an economic function; for there was no evidence offered to the district judge of direct or indirect competition between the peddlers and the truck drivers who were the union's normal members.

1. A court of equity has unquestioned authority to order dissolution of a voluntary organization which has been formed and used as a combination in restraint of interstate trade or commerce. Such orders have frequently been directed against trade associations. See, *e.g.*, *Hartford-Empire Company* v. *United States*, 323 U.S. 386, 428, and the final decrees in *United States* v. *Trans-Missouri Freight Association*, 166 U.S. 290, 297, 300, 308–309 (final decree reprinted in 1 Fed. Antitrust Dec. 80) and in *United States* v. *United Liquors Corp.*, 149 F. Supp. 609 (W.D. Tenn.), affirmed, 352 U.S. 991 (final decree reprinted in J. St., No. 637, O.T. 1956, see p. 23a, par. VII). Applying the label "labor union" to the combination formed by the defendant peddlers does not change its true character. Indeed, it is stipulated that after the peddlers had formed a trade association "to help to improve the[ir] condition and standing * * * by * * * adherence to a code of ethics," the business agent of the local "told the peddlers to choose between the Union and the association, stating that the association could not lawfully do for the peddlers what the Union could do" (J.S. 39–40, Fndg. 36). The fact that the peddlers' combination was a subdivision of a regular labor organization do-

immunize it from dissolution because the decree does not affect the normal and legitimate activities of the employees or their union.

The record supports the district court's conclusion that the peddlers' association with the union was "not for the purpose of raising the wages and working conditions of the peddlers and the union employees of the processors, but for the sole purpose of increasing the income of the peddlers alone, and enabling the Union, the peddlers and the processors to control the business of purchasing and selling waste grease in the Los Angeles area" (J.S. 17). The court's unchallenged findings, based on the stipulated facts, indicate (J.S. 38–48) that the grease peddlers' unit in the union devoted its efforts to fixing sales and purchase prices for waste grease, allocating grease sellers and buyers, and eliminating recalcitrant independents from business, rather than attempting to improve the wages, hours, and other terms and conditions of employment of bona fide employee union members. During the entire period in question "the grease peddler members of defendant Union were established and recognized by [it] as a group or segment separate and distinct from employee members of defendant Union," which held its own separate meetings; for most of that period the grease peddlers were a separate "division of [the] Union named Local 626–B" (J.S. 38, Fndg. 30). Significantly, while the peddlers submitted statements in a companion criminal case that their organization in the union was necessary to regulate their activities, the court below correctly pointed out (J.S. 48–49, Fndg. 67) that all of these statements

"referred to the benefits which the peddlers derived from their Union membership and none of them mentioned or referred to benefit which might be derived by any employees of processors by reason of peddler membership in the Union."

Appellants argue (J.S. 8–10) that the mere existence of the peddlers in the transportation field posed a competitive threat to the jobs, wages and working conditions of its employee members which was sufficient to justify the peddlers' being organized into the union, and, presumably, to prevent the court from ordering them to dissociate themselves from the union. But this is a contention made without evidentiary support. No testimony was introduced before the district judge showing that the peddlers and employee members of the union operated similar routes or performed competing economic functions. Nor is there anything in the record that suggests that the level of peddlers' profits or peddlers' working conditions either directly or indirectly affected the wages or working conditions of the employee members. No such inference can be drawn from the bare fact that some employees of processors, who are members of the union, pick up grease from sources other than those normally served by the peddlers. The district court specifically found that no processors in the Los Angeles area had "taken action, or threatened to take action, to make use of peddlers for strike breaking purposes" nor had "any processors in the Los Angeles area taken action, or threatened to take action, to substitute peddlers for driver-employees in the ac-

quisition of restaurant grease" (J.S. 48, Fndgs. 65–66). For these reasons the record does not present the question whether the peddlers could have been required to sever their connection with the union to prevent the recurrence of the unlawful practices had such severance also raised a threat to wages or working conditions. For the same reasons such cases as *Milk Wagon Drivers' Union* v. *Lake Valley Farm Products*, 311 U.S. 91, and *Teamsters Union* v. *Oliver*, 358 U.S. 283, are irrelevant.[1]

2. Appellants argue (J.S. 6–8) that their constitutionally guaranteed right of freedom of association and the specific provisions of the Norris-LaGuardia Act, 29 U.S.C. 101, *et seq.*, precluded the district court from expelling and excluding independent businessmen from the union, despite the unchallenged finding that these businessmen misused the union to violate the antitrust laws.[2] The constitutional argument may

[1] In both of those cases, unlike the present case, the records showed that the activities of the milk peddlers and the truck owner-operators had seriously affected the wages and working conditions of the union members for a long time; in neither of them was there any indication that the milk peddlers and truck owner-operators had sought union membership merely to achieve their own non-labor objectives. *Lake Valley*; see 311 U.S. at 95–96: *Oliver*: Record, No. 49, O.T. 1958, pp. 196–200, 202 (opening statement); 219–220 (offer of proof); cf. *id.* 114–115, 138–139 (first trial).

[2] Appellants also point to the proviso to Section 8(b)(1) of the National Labor Relations Act, 29 U.S.C. 158(b)(1), providing that nothing in that section shall "impair the right of a labor organization to prescribe its own rules with respect to

be dismissed immediately, we believe, for the First Amendment has never been held to guarantee businessmen or any other group the freedom to combine and conspire in restraint of trade. See *Giboney* v. *Empire Storage & Ice Co.*, 336 U.S. 490.

The Norris-LaGuardia Act is inapplicable to this case. The limitations which that Act imposes upon the power of the district courts to grant injunctive relief is limited to cases "involving or growing out of a labor dispute" (29 U.S.C. 101); and a labor dispute is defined as a controversy concerning the terms or conditions of employment, or concerning the association or representation of persons in negotiating with respect to such terms and conditions (29 U.S.C. 113(c)). This Court has expressly held that no labor dispute is involved where the activities of the members of a labor union or similar association relate not to the activities of employees but to "a dispute among businessmen * * * over the sale of commodities." *Columbia River Packers Ass'n* v. *Hinton*, 315 U.S. 143, 145; see *American Medical Ass'n* v. *United States*, 317 U.S. 519, 531; *Allen-Bradley Co.* v. *Local Union No. 3*, 325 U.S. 797, 807, n. 12 (distinguishing *Columbia River Packers* v. *Hinton*, because "Local 3 is a labor union and its spur to action related to wages and working conditions"); *Bakery Drivers Union* v. *Wagshal*, 333 U.S. 437, 443; *United States* v. *Women's Sportswear*

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the acquisition or retention of membership therein." But this proviso merely qualifies the provision in that Act making any union restraint or coercion of employees' rights to join or not to join a labor organization an unfair labor practice.

Ass'n, 336 U.S. 460, 464. As we have shown, this case involves neither employees nor labor objectives.

3. Finally, appellants claim (J.S. 10) that, since the decree requires the expulsion from the union of 35 to 45 grease peddlers who are not parties to this case, the latter group could not be denied union membership, consistently with due process of law, "unless they are accorded an opportunity to be heard." But the union obviously appeared before the district court in behalf of *all* of its members, and if any of them felt that the union was not adequately representing their interests, they were free to seek intervention. Cf. *Sam Fox Publishing Co. v. United States*, 366 U.S. 683. Indeed, the district court indicated (J.S. 25) that such other members could have participated in the hearing, had they wished to do so.

CONCLUSION

The decision below is correct and this appeal presents no question warranting plenary consideration by this Court. The judgment of the district court should be affirmed.

Respectfully submitted.

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